THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.18521, 18530 and 18543 OF 2005

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05.10.2005

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Between:

1. Dharmala Venkata Reddy, S/o.Appa Rao, Visakhapatnam

and others

… Petitioners

AND

1. The Special Deputy Collector (Land Acqusition),

Visakhapatnam and another

… Respondents

COMMON ORDER:

In these three writ petitions, the petitioners assail the land acquisition proceedings initiated by the second respondent for acquiring lands situated in Dibbapalem village in Paddagantyada Mandal, Visakhapatnam District for the purpose of Gangavaram Port. W.P.No.18521 of 2005 is filed challenging the notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) dated 25.02.2003 proposing to acquire the lands in Block No.I. W.P.No.18530 of 2005 is filed challenging the land acquisition proceedings for acquiring lands in Block No.II and W.P.No.18543 of 2005 is filed challenging acquisition of lands in Block No.III. In all the writ petitions, the petitioners pray for quashing the notifications issued under Section 4(1) of the Act as being void.

The petitioners in W.P.No.18521 of 2005 purchased small extents of lands comprised in survey Nos.230, 231, 234, 235 and 236 out of total extent of Acs.39.43 in Block No.I; the petitioners in W.P.No.18530 of 2005 purchased small bits of land comprised in survey Nos.232, 250, 251 to 256 and 266 out of Acs.40.24 in Block No.II, and the petitioners in W.P.No.18543 of 2005 purchased small extents of lands comprised in survey Nos.260, 261, 264, 265, 267 and 268 out of Acs.40.30 in Block No.III of Dibbapalame village, Peddagantyada Mandal, Visakhapatnam District, from the original owners under registered sale deeds. They challenge the notifications

under Section 4(1) of the Act on the ground that though the notification was issued on 25.02.2003, the respondents did not pass any award within a period of two years and therefore notifications lapsed. Secondly, they would urge that there was no need for acquiring the land and action initiated under the Act was only to harass the petitioners and put them to disadvantage. They contend that if fresh notification is issued, the petitioners are prepared to give their lands for Gangavaram Port at the prevailing market rate.

These three matters came up for admission on 25.08.2005. Even at that stage, it was brought to the notice of this Court by the learned Assistant Government Pleader for Revenue (Land Acquisition) that pursuant to the impugned notification, awards were already passed and the compensation was deposited before the revenue Court as the petitioners failed to establish their title over the lands allegedly owned by them. Therefore, the Court declined to admit the matters or pass interim orders and adjourned the matters to enable the Government Pleader to file counters.

The respondents have now filed counter affidavits separately in all the writ petitions. It is stated that in all the matters the notifications were issued on 06.03.2003 and the declaration under Section 6(1) of the Act was published on 27.06.2003 and 26.07.2003 and after conducting award enquiry, the award was passed in all the matters on 25.07.2005. It is further stated in the counter affidavit that the petitioners purchased small bits of lands in various survey numbers of Dibbapalem village having come to know about the acquisition proceedings with an intention to claim the benefits of employment and rehabilitation for displaced persons. It is also alleged that the representations are not *bona fide,* that some of the petitioners constructed small sheds with A.C. sheets roof and that they are not residing in the land or in the sheds.

Learned counsel for the petitioners, Smt.D.Prasanna Kumari, in all the writ petitions submits that the notification under Section 4(1) of the Act was published on 06.03.2003 and therefore the award passed on 25.07.2005 is beyond a period of two years as per Section 11-A of the Act. By reason of this, the notification under Section 4(1) of the Act have lapsed. Secondly, she would vehemently contend that even though the enquiry under Section
5-A of the Act was dispensed with, possession was not taken within ninety days as required under law and that no notice was given to the petitioners before conducting award enquiry. She also contends that according to the Mandal Revenue Officer, requisitioning department has not released the amounts towards compensation and therefore it was not possible for the land acquisition officer to pass award.

Learned Assistant Government Pleader for Revenue (Land Acquisition), Sri Purushotham Reddy, submits that the award has been passed within a period of two years from the date of publication of declaration under Section 6(1) of the Act, that notices were issued to all concerned under Sections 9(1) and 10 of the Act before passing the award. Merely because possession was not taken after dispensing with the enquiry under Section 5-A of the Act, the same would not render acquisition proceedings illegal.

The submission of the learned counsel for petitioners that the award was not passed within a period of two years from the date of notification under Section 4(1) of the Act is misconceived. After amendment of Land Acquisition Act, 1894, the law requires the land acquisition officer to pass an award within a period of two years from the date of issue of declaration under Section 6(1) of the Act. Even for the said purpose, the date relevant is the later date on which Section 6 declaration is published. Secondly, the submission that the proceedings are vitiated for inaction in taking possession within ninety days is also misconceived. Presumably, the learned counsel for the petitioners relies on Section 17(5) of the Act, which was an amendment introduced by A.P.State Legislature and which was declared *ultra vires* by this Court. Thirdly, the submission that funds were not provided till recently by the requestioning department and therefore award could not have been passed is also not correct. It should be remembered that the land is being acquired for the Department of Ports, Government of Andhra Pradesh and not for quasi Government organization, and there is no question of any department providing funds for the acquisition. If the submission of the learned counsel for petitioners is accepted, whenever the Government acquires the land, the Government has to necessarily show that the funds are available. The question of payment of compensation would arise only after the award is passed under Section 12 of the Act and such compensation need be paid before taking possession.

This Court considered the submission of non-issue of notice under Sections 9(1), 9(3) and 10 of the Act by the learned counsel, in the light of the original record produced by the learned Assistant Government Pleader. The record produced would show that the notice under Section 9(1) of the Act, were published locally by affixing in the notice boards of the Office of Special Deputy Collector (LA), APIIC (SEZ), Unit I, Visakhapatnam, Mandal Revenue Offices, Pedagantyada, Sub Registrar Office, Gajuwaka and Municipal Office, Gajuwaka. Individual notices were also served on all the interested persons before conducting award enquiry. Copies of these notices are found in three relevant files pertaining to the acquisition of Block I, II and III. Even if individual notices are not served, the service of notice under Sections 9(1), 9(3) and 10 is sufficient compliance with law. The learned Assistant Government Pleader has produced the copies of the award passed by the first respondent on 25.07.2005 in respect of lands in Block No.I, award dated 27.08.2005 for Block No.II and award dated 30.07.2005 for lands in Block No.III. Therefore, the submission of the learned counsel for the petitioners that award is not passed is not correct. This Court considered other submissions raised by the learned counsel for the petitioners though such grounds were not specifically raised in the writ petition. The writ petition is devoid of any merit.

The writ petition is also liable to be dismissed for delay and laches. It is well settled that when the proceedings initiated under the Act have become final, a writ petition challenging notification under Section 4(1) of the Act cannot be entertained. The Supreme Court consistently held that inordinate delay in filing the writ petition when all steps taken in the acquisition proceedings have become final, would disentitle the aggrieved persons for any relief in a writ petition under Article 226 of Constitution of India. In **Municipal Corporation of Greater Bombay v Industrial Development**

Investment Co., Pvt., Limited, the Supreme Court held:

> It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary to quash the notification under Section 4 (1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

I n **Municipal Council, Ahmednagar v Shah Hyder Beig**, the Supreme Court considered the effect of delay in exercise of jurisdiction under Article 226 and held:

> It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defects equity' has its fullest application in the matter of grant of relief under Art.226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

I n **Municipal Council, Ahmednagar v Shah Hyder Beig** (supra), the Supreme Court referred to **Municipal Corporation of Greater Bombay v Industrial Development Investment Co., Pvt., Limited** (supra) and held that, "after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder". Therefore, this writ petition cannot be entertained and is liable to be dismissed.

In the result, for the above reasons, these writ petitions are dismissed without any order as to costs.

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(V.V.S.RAO,J)

05.10.2005.

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